

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ROBERT MCFARLAND,

Petitioner,

v.

CIVIL ACTION NO. 1:15CV5
(Judge Keeley)

DAVID BALLARD, Warden,

Respondent.

ORDER ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT AND RECOMMENDATION

Pending before the Court is the Report and Recommendation ("R&R") of the Honorable Robert W. Trumble, United States Magistrate Judge (Dkt. No. 40), dated July 8, 2016. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to review de novo those portions of the magistrate judge's findings to which objection is made. Failure to file objections to the R&R permits the Court to review the recommendation under the standards that it believes are appropriate, and under these circumstances, the parties' right to de novo review is waived. See Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). To date, no objections have been filed. Accordingly, the review is for clear error. Id.

Upon review of the R&R and the record, the Court adopts the opinion of the Magistrate Judge for the reasons discussed in the R&R. Therefore, the Court:

1. **ADOPTS** the R&R (Dkt. No. 40);

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2. **DENIES** the respondent's motion to dismiss the petition as untimely (Dkt. No. 14);
3. **DENIES** the respondent's motion for summary judgment (Dkt. No. 23);
4. **DENIES** the respondent's motion to dismiss for failure to exhaust (Dkt. No. 31);
5. **GRANTS IN PART AND DENIES IN PART** the petitioner's motion to proceed with Martinez claims or to stay the proceeding pending exhaustion (Dkt. No. 38);
6. **STAYS** the case; and
7. **DIRECTS** the petitioner to file his unexhausted claims in state court within 30 days of receipt of this Order; to file quarterly reports, beginning on October 1, 2016, explaining the status of his unexhausted claims; and to file a notice of exhaustion within 30 days from the date his state court remedies have been fully exhausted.

It is so **ORDERED**.

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The Court **DIRECTS** the Clerk to transmit this Order to counsel of record and to the pro se petitioner by certified mail, return receipt requested.

DATED: July 29, 2016.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE